

***Remarks***

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendment, claims 1-33 are pending in the application, with claims 1, 11, 22, 27, 28 and 30 being the independent claims. The Applicants note that the amendments to the claims have been made to expedite prosecution. The Applicants do not acquiesce to the rejections and reserve the right to pursue original claims, cancelled claims, and new claims in a continuation application.

***Specification***

The specification is objected to as allegedly failing to provide proper antecedent basis for some claimed subject matter. In particular, reference was made to the recitation in claim 2 “that the membrane has a movable portion and a fixed portion.”

Applicants respectfully submit that the specification provides support for that concept and that several drawings in the application illustrate that each of the membranes 90 and 92 includes a movable portion and a fixed portion. In particular, as set forth in paragraph 1034 and Figs. 5A and 5B, membrane 90 includes a proximal portion 94, that is coupled to the cover 30, and a distal portion 96. As set forth in Figs. 7 and 8, membrane 90 is illustrated as it moves from a first position illustrated in Fig. 7 to a second position illustrated in Fig. 8. As described in detail in paragraph 1043, the distal portion 96 of the membrane 90 is movable, and therefore is the movable portion of the membrane.

Applicants have amended paragraph 1034 to recite in part that “[t]he proximal portion 94 can be referred to as a fixed portion, and the distal portion 96 can be referred to as a movable portion (see FIGS. 7 and 8).” Applicants respectfully submit that this objection to the specification has been overcome and request that it be withdrawn and that no new matter is entered by way of this amendment.

***Claims Rejections***

Claims 1-11, 15, 16, 20, 28 and 29 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,332,223 to Le Gette, et al. (“*Le Gette*”). Claims 1, 8, 11 and 14-16 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,735,784 to Isom, et al. (“*Isom*”).

***Independent Claim 1***

Regarding independent claim 1, Applicants have amended claim 1 to recite that the ear warmer comprises “a membrane coupled to the cover, the membrane and the inner member of the cover forming a receptacle configured to receive at least a portion of an ear of a user between the membrane and the cover.”

Applicants respectfully submit that both *Le Gette* and *Isom* fail to teach or suggest the invention as recited in amended independent claim 1. For at least this reason, Applicants respectfully submit that independent claim 1 is allowable.

Applicants also submit that dependent claims 2-10 are allowable at least based on their dependency upon independent claim 1.

***Independent Claim 11***

Regarding independent claim 11, Applicants have amended independent claim 11 to recite that the ear warmer comprises “a membrane coupled to at least one of the cover member and the frame, the membrane and the cover member forming a receptacle configured to receive at least a portion of an ear of a user between the membrane and the cover member.”

Applicants respectfully submit that both *Le Gette* and *Isom* fail to teach or suggest the invention as recited in amended independent claim 11. For at least this reason, Applicants respectfully submit that independent claim 11 is allowable.

Applicants also submit that dependent claims 12-21 are allowable at least based on their dependency upon independent claim 11.

***Independent Claim 28***

Regarding independent claim 28, Applicants have amended independent claim 28 to recite that the method of manufacturing an ear warmer includes “disposing one from the group of the inner member, the outer member, and the membrane between the remaining members from the group of the inner member, the outer member, and the membrane, the inner member and the outer member being coupled together to define an interior region therebetween, the interior region being configured to receive a frame, the membrane being configured to be disposed proximate to an outer surface of one of the inner member and the outer member outside of the interior region such that the membrane and the outer surface form a receptacle therebetween, the

receptacle being configured to receive a portion of a user's ear between the membrane and the outer surface."

Applicants respectfully submit that both *Le Gette* and *Isom* fail to teach or suggest the invention as recited in amended independent claim 28. For at least this reason, Applicants respectfully submit that independent claim 28 is allowable.

Applicants also submit that dependent claim 29 is allowable at least based on its dependency upon independent claim 28.

#### ***Allowable Subject Matter***

The Applicants appreciate the indication of allowable subject matter in claims 12, 13, 17-19, 21-27 and 30-33.

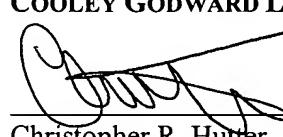
#### ***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that such objections and rejections be withdrawn. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,  
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